IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 14537 of 2007(E)

AGAINST THE ORDER IN EP. 368 /2004 IN
OS.160/2000 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

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1. DAISY JOSEPH @ DAISY JOJO ,
   AGED 33 YEARS, W/O. K.G.JOSEPH, KANNAMPILLIL HOUSE
   LISIE ROAD, KOTTAYATHODU LINE, COCHIN - 18.

2. RESHMA JOSEPH (MINOR),
   AGED 11 YEARS, REPRESENTED BY THE 1ST PETITIONER
   MOTHER (NATURAL GUARDIAN).

BY ADV. SRI.GIGIMON ISSAC

RESPONDENTS:

THE MANAGER,
BHARATH OVERSEAS BANK LTD., PERUMPILLIL BUILDING,
M.G.ROAD, ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.14537 OF 2007 E

Dated this the 30th May, 2007.

JUDGMENT

This writ petition is filed seeking to stay the execution proceedings before the Principal Sub Court, Ernakulam and to pass orders in Ext.P3 petition. The decree holder bank has obtained a mortgage decree against the husband of the first petitioner. It is contended that the husband of the first writ petitioner is unheard of for more more than seven years and the first petitioner along with others had instituted a suit for a declaration that if it happens to be decreed they will be entitled to relief in the case. The husband of the first writ petitioner was an employee of the decree holder bank and he had availed loan and on default of payment of the loan a suit was filed for realisation of the amount. It is contended that the whereabouts of the husband is not known for more than seven years and F.I.R has been lodged in the year 1998, Now she has filed Ext.P3 application to consider her objections.

2. Since it is a mortgage decree, even if she is entitled to right over the property whether she can file such an application is a matter to be considered by the court after hearing both sides. It is also contended that the estimated price for the property is grossly inadequate

and the writ petitioners will be in the street if this property is sold. It is incumbent upon the court as well to fix a proper upset price and only to sell the property that may be necessary for the realisation of the decree debt. So these are all matters which has to be considered in a case of this nature. Therefore, I am inclined to dispose of the writ petition as follows:-

i) The executing court is directed to consider Ext.P3 application after giving due notice to the decree holder and pass appropriate orders on the same.

ii) The executing court also may find out whether the proper upset price is fixed for the property and the entire property is necessary for discharge of the decree debt. The sale which is posted for today shall stands deferred. The writ petitioners are directed to pay an amount of Rs.25,000/- (Rupees twenty five thousand only) on or before 11.6.2007.

Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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